

**Correcting Order**

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**  
EMPLOYEE

*- claimant*

**CASE NO.**  
RP1517/2009  
UD1345/2009  
MN1316/2009

against  
EMPLOYER

*- respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. T. O'Sullivan  
Mr O. Nulty

heard this claim at Monaghan on 20th July 2010

**Representation:**

Claimant(s) : Wilkie & Flanagan, Solicitors, Main Street, Castleblayney, Co. Monaghan

Respondent(s) : Mr. Oliver Costello BL instructed by:  
Coyle Kennedy MacCormack, Solicitors, Thomas Street, Castleblayney, Co. Monaghan

The determination of the Tribunal was as follows:-

This Order corrects the original Order dated August 8<sup>th</sup> 2010 and should be read in conjunction with that Order. The instructing barrister was incorrectly sited as Mr. Oliver Connolly BL instead of the correct title of Mr. Oliver Costello.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

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heard this claim at Monaghan on 20th July 2010

### **Representation:**

Claimant(s) : Wilkie & Flanagan, Solicitors, Main Street, Castleblayney, Co. Monaghan

Respondent(s) : Mr. Oliver Connolly BL instructed by:  
Coyle Kennedy MacCormack, Solicitors, Thomas Street, Castleblayney, Co. Monaghan

The determination of the Tribunal was as follows:-

At the outset the respondent conceded the appeal under the Redundancy Payments Acts, 1967 to 2007.

### **Respondent's Case:**

One of the co-Directors of the company gave evidence. He had employed the claimant as a general labourer from October 2<sup>nd</sup> 2006. Business declined during 2008 and employees were aware of it. By the end of 2008 there was no further work planned for the following year. During that year other employees had left for other work and others were let go until only the claimant remained.

The groundwork job they had been working on came to an end even though the job was not completed. He discussed the matter with his wife, and other co-director, and also with his accountant who advised him to let the claimant go. On December 23<sup>rd</sup> 2008 he met with the claimant by the workvan the claimant drove. He told the claimant that there was no more work for him and he was letting him go. He paid him his week's wages, 2 weeks wages as a goodwill gesture and gave him his P45. The respondent later said this was in lieu of notice. He told him to hold on to the workvan, as he would not be requiring it as there was no work and the claimant had no transport.

In February 2009 he rang the claimant to ask for some tools and told him he had no work for him. In May 2009 the groundwork his company had been doing previously recommenced work and he reprimed

the job. He employed 2 bricklayers and did the labouring work himself. He stated that the claimant was not a qualified bricklayer.

On cross-examination he stated that he was not aware the claimant was entitled to a redundancy payment but was now conceding the claim. He had not paid any redundancy to other employees who had left. He had not given the claimant an RP50 form. When put to him he said that he did not have 4 people working on the site in May 2009.

### **Claimant's Case:**

The claimant gave evidence. He refuted the respondent had told him on December 23<sup>rd</sup> 2008 that he no longer had work for him and could hang on to the van. He drove the van home as normal and on opening his wage packet he saw his wages and his P45. There was no further contact with the respondent until he received a call in February 2009. The respondent was looking for some tools. The claimant asked had he any work for him and was told there would be in a few weeks.

He was offered a job by a family member in Ballygally but did not take it up as it was a good distance away and he was waiting to return to work for the respondent. In May 2009 he heard the respondent was working again and observed him and 4 others working onsite. 2 of the men had been previously employed with the respondent and were not bricklayers. In June 2009 he returned the van.

On cross-examination he again refuted the alleged conversation took place on December 23<sup>rd</sup> 2008.

### **Determination:**

The Tribunal have carefully considered the evidence adduced in this case and are satisfied there was no work available for the claimant from December 23<sup>rd</sup> 2008 and therefore he was made redundant.

Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 succeeds and awards the appellant a redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of Birth:	04 January 1964
Date of Commencement:	02 October 2006
Date of Termination:	23 December 2008
Gross Pay:	€ 441.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Loss having been established the Tribunal awards the sum of € 882.00, this being two weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed.

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(CHAIRMAN)